

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

JASON SOULLIERE,

Plaintiff,

Case No. 2014-294-CZ

vs.

LOUIE MCALPINE AND CINDY
MCALPINE,

Defendants.

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OPINION AND ORDER

Defendants have moved for summary disposition pursuant to MCR 2.116(C)(1). Plaintiff has filed a response and requests that the motion be denied.

Factual and Procedural History

This lawsuit stems from Plaintiff's purchase of a 20% fractional undivided oil and gas working interest with a 15% net revenue interest in "Sleeper #3, Tract 2" (the "Interests"). The investment was formally memorialized in a February 5, 2012 participation agreement (the "Agreement"). Plaintiff purchased the Interests from Secure Operations Group, LLC ("SOG"), an Oklahoma limited liability company allegedly operated by Defendants.

On January 27, 2014, Plaintiff filed his complaint in this matter alleging that the Interests constitute securities under the Uniform Security Act, MCL 451.2101 et seq. (the "Act"), that Defendants' actions in issuing, offering for sale, promoting, and selling the Interests violated the Act, and that Defendants are liable for the violations as managers, members, officers, directors, agents and/or control persons of SOG. On March 14, 2014, Defendants filed their instant motion for summary disposition in lieu of filing an answer. On April 28, 2014, the Court held a hearing

in connection with the motion and took the matter under advisement. The Court has reviewed the pleadings and arguments submitted by the parties and is now prepared to render its decision.

Standard of Review

In reviewing a motion for summary disposition brought under MCR 2.116(C)(1), the court considers consider the pleadings and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. MCR 2.116(G)(5). *WH Froh, Inc v Domanski*, 252 Mich App 220, 225-226; 651 NW2d 470 (2002). The plaintiff bears the burden of establishing jurisdiction over a defendant, but need only make a prima facie showing of jurisdiction to defeat a motion for summary disposition. *Id.*

Arguments and Analysis

In support of its motion, Defendants contend that this Court does not have jurisdiction over them, and therefore does not have jurisdiction in this case. In response, Plaintiff asserts that the Court has jurisdiction over Defendants under MCL 600.705.

Determining jurisdiction under the long-arm statute requires a two-part inquiry. First, the Court must ascertain if jurisdiction is authorized by MCL 600.705. Second, the Court must "determine if the exercise of jurisdiction is consistent with the requirements of the Due Process Clause of the Fourteenth Amendment." *Aaronson v Lindsay & Hauer Int'l Ltd*, 235 Mich App 259, 262; 597 NW2d 227 (1999).

I. Limited Personal Jurisdiction under MCL 600.705.

The long-arm statute permits the court to exercise jurisdiction over a person based on certain relationships between that person or his agent and the state if the cause of action arose out of that relationship. MCL 600.705; *Schneider v Linkfield*, 40 Mich App 131, 134; 198 NW2d 834 (1972), *aff'd* 389 Mich. 608 (1973). Specifically, section 705 provides:

The existence of any of the following relationships between an individual or his agent and the state shall constitute a sufficient basis of jurisdiction to enable a court of record of this state to exercise limited personal jurisdiction over the individual and to enable the court to render personal judgments against the individual or his representative arising out of an act which creates any of the following relationships:

- (1) The transaction of any business within the state.
- (2) The doing or causing an act to be done, or consequences to occur, in the state resulting in an action for tort.
- (3) The ownership, use, or possession of real or tangible personal property situated within the state.
- (4) Contracting to insure a person, property, or risk located within this state at the time of contracting.
- (5) Entering into a contract for services to be rendered or for materials to be furnished in the state by the defendant.
- (6) Acting as a director, manager, trustee, or other officer of a corporation incorporated under the laws of, or having its principal place of business within this state.
- (7) Maintaining a domicile in this state while subject to a marital or family relationship which is the basis of the claim for divorce, alimony, separate maintenance, property settlement, child support, or child custody.

A. Defendant Louie McAlpine

Plaintiff contends that Defendants transacted business in Michigan by soliciting the sale of securities including the Interests. Specifically, Plaintiff testified that Defendant Louie McAlpine contacted him repeatedly via phone and email to discuss investing in various securities, including the Interests. (Plaintiff's Exhibit 8.) Further, Plaintiff testified that after numerous telephone conversations he decided to invest in the Interests. (Id.) In addition, Plaintiff has provided various emails from Defendant Louie McAlpine, which evidences that he was routinely involved in the sale of securities for SOG. (Plaintiff's Exhibit 9.) Based on Plaintiff's testimony, as well as the emails attached to Plaintiff's response, the Court is

convinced that L. McAlpine transacted business in Michigan, including the sale of the Interests, which is the basis for this case.

B. Defendant Cindy McAlpine

Defendant Cindy McAlpine is the President of SOG. Defendant Cindy McAlpine signed the Agreement on behalf of SOG. For the purposes of Michigan's long-arm statute, defendant's transaction or commission of the slightest act of business in Michigan suffices to give the state courts statutory authority to exercise limited personal jurisdiction *LGT Enterprises, LLC v Hoffman*, 614 F Supp 2d 825 (WD Mich 2009). Moreover, Michigan Courts have personal jurisdiction over the principals of a business where the business' agent(s) solicit sales in Michigan. *Schmidt v Wilbur*, 775 F Supp 216 (ED Mich 1991.)

In this case, Defendant Cindy McAlpine executed the Agreement and is the president of SOG, an entity which actively sought to sell various securities, including the Interests, to individuals and companies in Michigan. Under these circumstances, the Court is convinced that Defendant Cindy McAlpine was sufficiently involved in the sale of the Interests to allow this Court to exercise limited personal jurisdiction over her in this matter.

II. Due Process

Even if a defendant's conduct places him within an enumerated category of MCL 600.705, a Michigan court may not exercise limited personal jurisdiction over the defendant unless to do so would not offend constitutional due process concerns. *Green v Wilson*, 455 Mich 342, 350-351; 565 NW2d 813 (1997). Due process restricts permissible long-arm jurisdiction by defining the quality of contacts necessary to justify personal jurisdiction under the constitution. *Id.* at 348. A court may acquire personal jurisdiction over a nonresident when the nonresident defendant's relationship with the forum is such that it is fair to require the defendant to appear

before the court. *Int'l Shoe Co v Washington*, 326 US 310, 319, 66 SCt 154, 90 LEd 95 (1945). Whether sufficient minimum contacts exist between a defendant and Michigan to support exercising limited personal jurisdiction is determined by applying a three-pronged test: "First, the defendant must have purposefully availed himself of the privilege of conducting activities in Michigan, thus invoking the benefits and protections of this state's laws. Second, the cause of action must arise from the defendant's activities in the state. Third, the defendant's activities must be substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable." *Mozdy v Lopez*, 197 Mich App 356, 359; 494 NW2d 866 (1992).

The Court is satisfied that Plaintiff's claim is sufficient to meet Michigan's long arm statute. Plaintiff's allegations clearly establish that Defendants were involved, or their company's agents were involved, in the sale of various securities in Michigan, including the Interests. The Court is also satisfied that Plaintiff's allegations are sufficient to meet the fundamental fairness requirements of the Due Process Clause of the Fourteenth Amendment. Defendants purposefully availed themselves of the privilege of conducting activities in Michigan, the cause of action is based upon sales and communications made to Plaintiff, a Michigan resident. For these reasons, the Court is convinced that sufficient contacts exist to vest this Court with personal jurisdiction over Defendants. Consequently, Defendants' motion for summary disposition pursuant to MCR 2.116(C)(1) must be denied.

Conclusion

Based on the foregoing, the Court is convinced that personal jurisdiction over Defendants in the State of Michigan, in this Circuit Court, is proper under the law. Consequently, Defendants' motion for dismissal under MCR 2.116(C)(1) is DENIED. The Court states this Opinion and Order neither resolves all pending matters nor closes the case. MCR 2.602(A)(3).

IT IS SO ORDERED.

/s/ John C. Foster

JOHN C. FOSTER, Circuit Judge

Dated: May 8, 2014

JCF/sr

Cc: *via e-mail only*

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